

## Mortgage Agreement

AVANTI | FINANCE

Disclosure Date:

LoanDisclosedate

Loan Contract Number:

LoanLoannumber

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### A The Parties

#### The Lender

(also referred to as “we” or “us”)

#### Avanti Finance Limited

Address 33 Broadway, Newmarket, Auckland 1023  
Private Bag 11917 Ellerslie, Auckland 1542

Phone: 0800 33 33 20

Email: applications@avantifinance.co.nz

#### Borrower0FullnameBorrower0Liability

Address: Borrower0Fulladdress

Phone: Borrower0Phone1

Email: Borrower0E\_mail

#### Guarantor0FullnameGuarantor0Liability

Address: Guarantor0Fulladdress

Phone: Guarantor0Phone1

Email: Guarantor0E\_mail

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### B Your Loan

**We agree to lend** to you \$LoanTotalloanamount

This is the amount shown as “Total Loan Amount” in the *Loan Details*. If you have chosen to borrow using more than one *account* then this amount is the total that we will lend on all of your *accounts* including under a *line of credit account* (if you have one).

**Before we lend**, you must meet all of our pre-settlement requirements (see clause 2 of the *General Terms*). If you don't we can delay making an advance to you or we can cancel our agreement to lend.

**You may ask us to top-up your loan** but we can say no to your request without the need to give any reasons. If we agree, any future amount shown as a “further advance” in any *Loan Variation Statement* will also be covered by the terms of *this agreement*.

**You may redraw any** amounts prepaid if you pay amounts in excess of your *scheduled repayments* (clause 17 of the *General Terms* explains if and how you may *redraw*).

**The terms and conditions that apply to your credit contract** (other than those implied by law) are set out in the following documents:

1. this document entitled *Mortgage Agreement*; which includes the *Loan Details* and the *Fees Brochure*;
2. the document entitled *General Terms*;
3. each *Security* (which includes each *Guarantee*).
4. any *Loan Variation Statement* that we give you following your request and our agreement to vary your arrangements with us (if we agree to your request for a top-up or if we agree to any other change).

Together, these documents make up and are referred to as “*this agreement*”.

**A dictionary of defined terms** is included at the end of the *General Terms*. For the sake of convenience, we use defined terms in *this agreement*. Words in *italics* indicate a defined term.

#### Important Notice:

When you sign *this agreement*, you enter into binding legal obligations to borrow and repay money. It is important that you read and understand *this agreement* before you sign it.

If you are unsure about anything contained in *this agreement* or you would like to have it explained to you then we recommend that you obtain legal advice from a lawyer.

**You agree** that by signing *this agreement*, you promise us and you acknowledge to us that:

1. **You will repay** the *loan* at the time and in the manner set out in the *Loan Details* – and if we agree to make any further advance, you will repay the further advances at the time and in the manner set out in any *Loan Variation Statement*.
2. **You will comply with all of the terms** and conditions that are set out in *this agreement*, in every *Security* that you give us and all terms and conditions that are implied by law.
3. **You have read and understood *this agreement***, including your right to cancel, and you are signing *this agreement* relying on your own judgement and after you have made an informed decision to borrow.
4. **You have each received a copy of *this agreement***.
5. **Each of you is liable** to repay the *total amount owing*. This means that if we choose, we can require any one of you to pay the entire amount owed. This is referred to as joint and several liability. If you are a guarantor, this acknowledgement also applies to you unless we have agreed to limit your liability.
6. **You agree to give security:** You agree to give us a security interest in the property set out in the *Loan Details* under the heading “Security”. This means that if you don’t repay us the full amount owing, we have the right to sell that property and apply the sale proceeds to help repay the amount owing.
7. **You appoint us your attorney:** You appoint us your attorney for the purposes set out in clause 34.3 of the *General Terms*. This power to act as your attorney is irrevocable until the *loan* is repaid in full.
8. **Consideration:** The *security* referred to in paragraph 6 above and the power of attorney referred to in paragraph 7 above are given in consideration of our agreeing to lend you, the borrower (and if *security* is given by a guarantor, our agreeing, at the request of the guarantor to lend you, the borrower) the *loan*.
9. **You appoint agent for service:** You appoint each other borrower or guarantor to be your agent for service for the purposes of section 355 of the Property Law Act 2007 and for the service of notices under *this agreement* during any period when you are out of New Zealand. If you are not resident in New Zealand then it is a pre settlement requirement that you appoint another person resident in New Zealand to be your agent to receive service on your behalf.

#### **Key time limit – 21 days**

If you do not sign and return *this agreement* to us or, if the first advance is not made (in either case) within 21 days of the *disclosure date*, then we may cancel *this agreement* and we don’t have to lend to you.

#### **Electronic disclosure**

If an email address is inserted against your name in Part A of *this agreement* and if you have initialled the column “electronic disclosure consent” on the signing page, then you consent to any disclosure being made in electronic form by sending an email to your email address (see *General Terms* clause 32.4).

#### **Loan purpose**

We agree to lend you the *Loan* for the following purpose(s): LoanLoanpurpose.

You must use the *loan* for these purposes.

#### **Top-ups and variations**

Although you can ask us to make a further advance or to vary the terms of any *account* we do not have to do so and we can decline without giving you any reasons.

If we agree to a further advance or to vary your *loan*, we will record the further advance or variation in a document entitled *Loan Variation Statement*. From the date specified in any *Loan Variation Statement*:

- *this agreement* is varied as reflected in that *Loan Variation Statement*; and
- if the context requires, the terms of any previous *Loan Details* are varied to include the provisions set out in the *Loan Variation Statement*.

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## **C Acceptance by the Parties**

By signing *this agreement* in the space provided below:

1. you agree to borrow the *loan* on the terms and conditions set out in *this agreement* or if you are a guarantor you agree to enter into the guarantees set out in Part E: “Security” of *this agreement*
2. if you are an owner of *property*, you agree to mortgage and give us a *security* over the *property* set out in Part E to secure all moneys and all obligations that you owe us either alone or together with any other person and whether directly or under any guarantee and whether owing under *this agreement* or any other agreement(s) you may have with us.

**I consent to receive electronic disclosure**  
(initial here)

**Signature of Borrower**

Borrower0FullnameBorrower0Liability \_\_\_\_\_

Date .....

In the presence of:

\_\_\_\_\_  
*(witness name)*

\_\_\_\_\_  
*(witness signature)*

\_\_\_\_\_  
*(witness occupation)*

\_\_\_\_\_  
*(witness address)*

**Signature of Borrower**

Borrower0FullnameBorrower0Liability \_\_\_\_\_

Date .....

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

In the presence of:

\_\_\_\_\_  
*(witness name)*

\_\_\_\_\_  
*(witness signature)*

\_\_\_\_\_  
*(witness occupation)*

\_\_\_\_\_  
*(witness address)*

**I consent to receive electronic disclosure**  
(initial here)

**Signature of Guarantor**

Guarantor0FullnameGuarantor0Liability \_\_\_\_\_

Date .....

In the presence of:

\_\_\_\_\_  
*(witness name)*

\_\_\_\_\_  
*(witness signature)*

\_\_\_\_\_  
*(witness occupation)*

\_\_\_\_\_  
*(witness address)*

**Signature of Guarantor**

Guarantor0FullnameGuarantor0Liability

Date .....

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

In the presence of:

\_\_\_\_\_  
*(witness name)*

\_\_\_\_\_  
*(witness signature)*

\_\_\_\_\_  
*(witness occupation)*

\_\_\_\_\_  
*(witness address)*

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## Key information about your loan

The Credit Contracts and Consumer Finance Act 2003 requires lenders to include some key information about your loan in the loan contracts.

This can be included in various places. This table should help – it shows you where you can find each required piece of key information.

Key Information	Where to look for this information (if not set out below)
<b>Name and address of Lender:</b>	Part A. You may send notices to the Lender by: <ul style="list-style-type: none"><li>• writing to the Lender at the Lender’s postal address; or</li><li>• sending to a fax number specified (if any); or</li><li>• sending an email to the address specified (if any).</li></ul>
<b>Initial Unpaid Balance:</b> (as at the <i>disclosure date</i> )	Part D. This is the amount that you owe as at the <i>disclosure date</i> . It will be zero because as at the <i>disclosure date</i> , none of the <i>loan</i> will have been advanced.
<b>Subsequent Advances:</b> (after the <i>disclosure date</i> )	Part D. This represents all moneys we lend you after the <i>disclosure date</i> . They will be provided to you on the <i>settlement date</i> or in the case of a <i>line of credit account</i> on the dates you request subject to the terms and conditions applying to that <i>account</i> .
<b>Total Advances:</b>	Part D. This is identified as the “Total Loan Amount” in Part D and is the total amount of all advances made to or to be made to you. If you have more than one <i>account</i> , the <i>total loan amount</i> is split between each such <i>account</i> as set out in Part D.
<b>Credit Limit:</b>	Part D. This only applies if you have a <i>line of credit account</i> .
<b>Annual Interest Rate:</b>	Part D.
<b>Fixed Rate Period:</b>	Part D. This only applies if you have a <i>fixed rate account</i> .
<b>Method of Charging Interest:</b>	Clause 8 of the <i>General Terms</i> .
<b>Total Interest Charges</b>	Part D. This is the total amount of the interest charges payable under the contract. This will only apply if the loan term is less than 7 years; otherwise it will be blank.
<b>Credit Fees and Charges:</b>	The <i>Fees Brochure</i> , Part D, Part F, Part G, clauses 7 and 15 of the <i>General Terms</i> . Information on the administration costs and fees payable on full prepayment can be found in the sections set out in the “Full Prepayment” heading below.
<b>Payments Required:</b>	Part D. For the payments required for each <i>account</i> . You are required to make each payment of the amount specified by the time specified.
<b>Full Prepayment:</b>	You may repay in full at any time. <i>Break costs</i> are payable if you make any early repayment in respect of any <i>fixed rate account</i> . The <i>break costs</i> are calculated as set out in clause 15 of the <i>General Terms</i> .

**Security Interest:**

Part E. Each *security* will be security for all moneys and all of the obligations that each of you owes us either alone or jointly with any other person under *this agreement* and all other agreements or arrangements both now and in the future. This means that if you don't repay us the full amount owing, we have the right to sell that property and apply the sale proceeds to help repay the amount owing. If the net proceeds we receive from the sale of the *property* do not repay the *total amount owing* to us then after the net proceeds are applied to the *loan* you will remain liable to us for the *balance owing*. Unless you have our consent, you must not give a *security interest* in the *property* to anyone else. If you do then you will be in default and we will have we have the right to sell the *property* and apply the sale proceeds to help repay the *total amount owing*.

This applies whether or not you are aware that obligations have been incurred by, or money lent by us to, the other person (see clause 25).

**Default Interest Charges and Default Fees:**

**Default Interest:** Clause 22 of the *General Terms* provides that if you do not make a payment by its due date, interest is payable at the *default rate* on the amount in default until it is paid.

**Default Fees:** The fees and charges that may apply if you default under *this agreement* are set out in Part H and in the *Fees Brochure*.

**Continuing Disclosure Statements:**

We will provide you with regular statements of *account* as set out in clause 24 of the *General Terms*.

**Your Right to Cancel**

You are entitled to cancel the consumer credit contract by giving us notice.

**Time limits for cancellation**

If the disclosure documents are handed to you directly you must give notice to us that you intend to cancel within 5 working days after you receive the documents.

If the disclosure documents are sent to you by electronic means (for example, e-mail) you must give notice to us that you intend to cancel within 7 working days after the electronic communication was sent.

If the disclosure documents are mailed to you, you must give notice to us within 9 working days after they were posted.

Please note that Saturdays, Sundays and national public holidays are not counted as working days.

**How to cancel**

To cancel, you must give the creditor written notice that you intend to cancel the contract by –

1. giving notice to the us or one of our employees;
2. posting the notice to us or our agent; or
3. emailing the notice to our email address specified on the front page of this agreement.

You must also, within the same time, return to us any advances received by you under this contract.

**What you may have to pay if you cancel**

If you cancel this contract we can charge you:

- (a) the amount of any reasonable expenses we have had to pay in connection with this Contract and its cancellation (including legal fees and fees for credit reports, etc); and
- (b) interest for the period from the day you received any advances until the day you repay the advance to us.

**Hardship Variation:****What to do if you suffer an unforeseen hardship**

If you are unable reasonably to keep up your payments or other obligations because of illness, injury or loss of employment, the end of a relationship, or other reasonable cause, you may be able to apply to us for a hardship variation.

To apply for a hardship variation, you need to:

- a) make an application in writing; and
- b) explain your reason(s) for the application; and
- c) request one of the following:
  - an extension of the term of the contract (which will reduce the amount of each payment due under the contract); or
  - a postponement of the dates on which the payments are due under the contract (specify the period for which you want this to apply); or
  - both of the above; and
- d) give the application to us.

Do this as soon as possible. If you leave it too long, we may not have to consider your application.

**Financial Service Provider Disclosure Statement:**

Avanti Finance Limited is licensed (FSP No. FSP41821) by the Financial Markets Authority ('FMA') and has the status of a Qualifying Financial Entity ('QFE').

We take responsibility for the financial adviser services provided by our QFE advisers, which relate to the following financial products:

1. a consumer credit contract within the meaning of the Credit Contracts and Consumer Finance Act 2003; and
2. a contract of insurance.

FMA's contact details are: Financial Markets Authority,  
PO Box 1179, Wellington 6140  
Ph: 04 472 9830 or 0800 434 566  
Email: fma@fma.govt.nz

You can obtain information about financial advisers from the FMA and can report information about the QFE or its advisers to the FMA. The information provided in this Disclosure Statement is important and should help you decide which financial adviser to choose. You can check the status of the QFE and whether other entities are a member of the QFE group on the register at [www.fspr.govt.nz](http://www.fspr.govt.nz). This disclosure statement is given as at the as at the Statement Date on the second page of this agreement.

Our contact details are: Avanti Finance Limited,  
Private Bag 11-917, Ellerslie, Auckland 1542  
33 Broadway, Newmarket, Auckland 1023  
Phone 0800 33 33 20  
Email: info@avantifinance.co.nz

**Internal Complaints Procedure:**

Our complaints procedure may be initiated by telephone, email, via our website or in writing using the contact details specified above. If we can't resolve your issue immediately, here is how it will be dealt with:

1. If you have made your complaint verbally or via our website, we will acknowledge your complaint immediately. If you have made your complaint in writing we will acknowledge it within 5 working days of receiving it.
2. We aim to have your complaint resolved within 5 days and will email or write to you outlining the resolution. If we are unable to resolve your complaint within 5 working days we aim to resolve it within 20 working days.
3. In the event that we can't resolve your complaint within 20 working days, we will write to you advising you why we require more time to resolve your complaint.

**Dispute Resolution:**

We are a member of Financial Services Complaints Limited ('FSCL'), which is an approved dispute resolution scheme.

FSCL's contact details are:

Financial Services Complaints Limited,  
PO Box 5967, Wellington 6145  
Ph: 04 472 3725 or 0800 347 257  
Email: [info@fscl.org.nz](mailto:info@fscl.org.nz)



## Loan Details

Disclosure Date:

LoanDisclosedate

Loan Contract Number:

LoanLoannumber

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### D Financial Details

Total Loan Amount

**\$LoanTotalloanamount**  
(including *line of credit* limit of \$Lineofcreditlemit)

Loan Term

**LoanLoanterm (LoanLoanterm) years** from the *settlement date*

Loan Accounts

Your *loan* is comprised of AccountCount *accounts* as set out in the *financial table* below

#### Payments

You must repay the *loan amount* for each *account* together with interest at the *annual interest rate* for that account over the *account term* at the *payment frequency*. Unless we agree otherwise, the first payment is due one month after the *settlement date* if your *payment frequency* is monthly; one month and 7 days after the *settlement date* if your *payment frequency* is weekly; and one month and fourteen days after the *settlement date* if your payment frequency is fortnightly. Thereafter, payments are to be made at the *payment frequency*.

The amount of all *principal and interest repayments* is calculated to repay the *loan amount* in full over the *account term*. Payment amounts will change in line with changes to the *annual interest rate* for an *account*.

**Total number of payments**      **LoanTotalnoofpayments**      **LoanPaymentfrequency** payments

**Total amount of payments**      **\$LoanTotalamountofpayments**

**Total amount of interest**      **\$LoanTotalamountofinterest**

#### Disclosure Assumptions

When we calculate the total number of payments, total amount of payments and the total amount of interest we use the assumptions set out in Schedule 1 of the Credit Contracts and Consumer Finance Regulations 2004.

#### Financial Table(s)

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##### Initial Unpaid Balance

The initial unpaid balance as at the end of the *disclosure date* is: \$0.00

##### Subsequent Advances

**Total Loan Amount** \$LoanTotalloanamount

Less Establishment Fee \$CreditfeesEstablishmentfee

Less Valuation Fee \$CreditfeesValuationfee

Less Adviser Mandated Fee \$LoanAdviserfee

Less *line of credit account* credit limit not drawn down on the *settlement date* (if any)\* \$Lineofcreditlemit

**Net Balance** you will receive on the *settlement date*:

**!Undefined Bookmark,  
LOANTOTAL**

\* Please tell us if you wish to draw down under a *line of credit account* on the *settlement date*

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## E Security Interest

Before we lend to you, you must give us the *securities* set out below.

Each *security* will secure the payment or performance of all moneys and all obligations that you owe us both now and in the future. This includes payments and obligations under *this agreement* and under any other agreement that you have now or, at any time in the future you will have with us. This means that if you don't repay us the *total amount owing*, we have the right to sell the *property* and apply the sale proceeds to help repay the *total amount owing*. If the net proceeds we receive from the sale of the *property* do not repay the *total amount owing* to us then after the net proceeds are applied to the *loan* you will remain liable to us for the *balance owing*.

In relation to *property*, this type of *security* is called an "all obligations" mortgage. It incorporates the memorandum registered at Land Information New Zealand under No. 2017/4341. The terms and conditions of every *security* are deemed to be incorporated in *this agreement*.

<b>Mortgages</b>	A registered first mortgage is to be or has been taken over the following property(ies) and is to incorporate the terms of memorandum 2017/4341:
<b>Address of Property:</b>	Security0Fulladdress
<b>Mortgagor(s):</b>	Security0Mortgagor
<b>Record of Title number:</b>	Security0Title
<b>Priority Sum:</b>	Security0Prioritysum together with interest – including a specified principal amount of \$LoanTotalloanamount (being the initial advances secured by the mortgage)
<b>Property insurance required:</b>	An insured sum sufficient to rebuild all buildings on the property with an insurance company with a rating of A+ or better.

The above *securities* are also taken over any money or negotiable instrument received in payment of any claim on, or on cancellation of, any insurance policy in respect of a *property*.

Unless you have our consent, you must not give a *security interest* in the *property* to anyone else. If you do then you will be in default and we will have the right to sell the *property* and apply the sale proceeds to help repay the *total amount owing*.

<b>Guarantees</b>	A <i>Guarantee</i> is to be or has been taken from the person or persons (if any) described below and any other person who gives a <i>security</i> who is not a Borrower.
	<b>Guarantor0FullNameGuarantor0Liability</b>
	Address: Guarantor0Fulladdress
	Phone: Guarantor0Phone1
	Email: Guarantor0E_mail

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## F Credit Fees and Charges

All of the credit fee and charges are set out in the *Fees Brochure* that is attached to *this agreement*. We can change these fees at any time but before we do so we will give you notice of the changes. How we give you this notice is set out in clause 7.3 of the *General Terms*.

The credit fees and charges that you must pay on or before the *settlement date* are:

<b>Establishment Fee:</b>	\$CreditfeesEstablishmentfee. This fee represents costs we incur in connection with the application for your <i>loan</i> , processing and considering that application and making the <i>loan</i> .
<b>Valuation Fee:</b>	\$CreditfeesValuationfee. If we obtain a valuation report, this fee is payable by you. If this fee is not yet ascertained, you will be advised when it is known and the amount will be deducted from the first advance.

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## G Interest Rate Explanation

You can choose one of two interest rate types:

- 1.) a *variable rate* - this type of interest rate that can change at any time; and/or
- 2.) a *fixed rate* - this type of interest rate is fixed for a period and will not change until the end of that period.

The *financial table(s)* tell you which interest rate type and the annual interest rate that applies to each *account*. It is important that you understand how each interest rate type work and benefits of each type and the effect of choosing each type. If a *variable rate* changes we will tell you.

### Variable Rate

The *variable rate* that applies to each *account* is set out in the *financial table* for that *account*

We may change the *variable rate* by giving you written notice (see clause 9.3 of the *General Terms*).

The benefit of a *variable rate* is that you can prepay at any time without any *break costs*. This means that if you want to make payments in addition to the *scheduled repayments* or repay a lump sum you can do so without any penalty.

Please note that a *variable rate* is made up of a *named interest rate* plus a *margin*.

### First Mortgage Fixed Rates

If you choose a *fixed rate* for an *account*:

1. the *fixed rate* shown in the *financial table* for that *account* won't change provided you draw down the loan amount for that *account* in full within 14 days of the *disclosure date*; and
2. the *fixed rate* applicable on the *settlement date* will not change during the *fixed rate period* for that *account*.

If you don't settle within 14 days of the *disclosure date* and the fixed rate for the fixed rate period you have chosen changes, we will tell you the new fixed rate. If you don't accept the new rate, your *variable rate* will be the interest rate that applies to that *account*.

#### Fixed rate *break costs* warning

The downside of choosing a fixed rate for an *account* is that when any part of the principal of that *account* is repaid other than by the *scheduled repayments*, you may be required to also pay *break costs*. *Break costs* can apply to partial as well as full repayment during the *fixed rate period*.

*Break costs* represent a reasonable estimate of the loss that we suffer when you repay other than by the *scheduled repayments* and are a result of differences in interest rates. Depending on how interest rates have moved since the start of the relevant *fixed rate period*, **the amount of *break costs* can be very high**.

Clause 15 of the *General Terms* explains the method that we use to calculate *break costs*.

You should always contact us first and ask if any *break costs* will be payable before prepaying under a *fixed rate account*.

## H Default Interest charges and Default Fees

While we appreciate that you do not enter into the transactions expecting to default in your payments and obligations, when this happens, we incur costs and suffer losses. As a result, the following payments will be required to compensate us for these costs and losses when a payment is not made on time or if any other default occurs.

**Arrears Management Fee:** \$Arrearsmanagementfee per month. If you are in default under an *account* then this fee becomes payable for that *account* for each month or part month in which you are in default. It is payable at the end of the relevant month or earlier if the loan is repaid in full and is debited to the *account* in default.

**Default Interest:** If an amount is not paid when it is due, you must pay us default interest on the amount overdue for the period from its due date until it is paid in full in accordance with clause 22.1 and 22.2 of the *General Terms*. Default interest is calculated at the *default rate*, which is a rate that is 5% per annum above the *annual interest rate* applying to the amount in default during the time it is in default.

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## I Special Conditions

LoanSpecialconditions

# General Terms

## for Mortgage Loan Agreements

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### Finding your way around your Mortgage Loan Agreement

Finding your way around a series of documents can sometimes be confusing so here are some tips to help you find your way around our documents.

- Parts **A, B, and C** apply at all times and to all of your loan *accounts*.
- This applies to the initial *accounts* and all *accounts* we may agree to include in the future.
- Parts **D, E, F, G, H, and I** contain the specific details that apply to each *account*
- If you ask and if we agree to add or change *accounts* then we will do so by giving you a *Loan Variation Statement*.
- Part J contains the general terms that apply to *this agreement*.
- The Key Information section helps you locate the information that the credit law requires us to disclose to you.

Words in *italics* are defined terms and the dictionary of defined terms is contained in clause 37 of part J, the *general terms*

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## J: General Terms

### Borrowing

#### 1 How we lend

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##### The loan amount

We lend you money under *this agreement* in three different ways.

##### Variable rate or fixed rate account

- 1.1 We agree to lend you the *loan amount* for a *variable rate account* or a *fixed rate account* in one sum on the *settlement date*. Except to the extent that the *Loan Details* indicate that the *loan amount* is to be paid to others, we pay the net proceeds of the *loan amount* as set out in the *Financial Table* to your lawyer or to you or as directed by you or your lawyer.

##### Line of credit account

- 1.2 If the *Loan Details* include a *line of credit account* you may:

- drawdown an amount up to the *credit limit*,
- repay moneys owing;
- *redraw* any moneys repaid to the *line of credit account*

at any time up until the end of the *line of credit* period.

You can ask for a draw down under a *line of credit account* to be made with other advances on the *settlement date*. Otherwise you can ask us in writing by email fax or letter at any time during the *line of credit period*.

##### Redraw under an account

- 1.3 If you pay amounts under an *account* in addition to the *scheduled repayments* then the actual balance of that *account* may be lower than the *scheduled balance* of that *account*. Please note that if you pay additional amounts under a *fixed rate account* you may also have to pay *break costs*.

- 1.4 You can ask to *redraw* any amounts up to but no more than the then *scheduled balance*. Clause 17 tells you how to ask for a *redraw*.

##### Line of credit and redraw are always at our discretion

- 1.5 Drawing amounts from the *line of credit account* or by way of a *redraw* are at our discretion. This means that if you ask we do not have to agree to

lend to you nor do we need to give reasons for our decision.

- 1.6 During the *line of credit period*, we may give you written notice reducing your *credit limit* under a *line of credit account*. If you have any advances in excess of the reduced *credit limit* then you must reduce the *balance owing* for the *account* to the new *credit limit* on the next *repayment date*.

#### 2 What must happen before we lend

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- 2.1 We only have to lend to you if:

- (a) the title to each *property* is satisfactory to us;
- (b) all searches, certificates (including certificates from trustees and company directors and solicitors), valuations, reports and consents we request relating to a *property* or any *security* have been provided and are satisfactory to us;
- (c) if the *property* is sensitive land, you are eligible to buy the *property* under the Overseas Investment Act 2005.
- (d) we have received:
  - evidence that council rates, body corporate levies (if any), any other government or local government taxes or charges and the insurance premiums for each *property* are paid up to date;
  - each *security* and its related documents confirming registration and enforceability or are satisfied that immediately after settlement each *security* will be registered;
  - all applicable documentation, including but not limited to the documentation that makes up *this agreement*;
  - if any *property* is a Unit Title, a copy of a pre-settlement disclosure statement under section 147 of the Unit Titles Act 2010;
  - evidence of any insurance we require (such as fire and all risks, public liability insurance and strata title insurance) noting our interest as mortgagee – house insurance must be for a sum sufficient to cover the full

replacement value of the buildings and built structures on the *property*; and

- a direct debit authority,

and this information is satisfactory to us;

- (e) you have complied with any other conditions that we have reasonably requested that you satisfy;
- (f) you are not in default under *this agreement* and no-one who provides a *security* is in default under that *security* or has withdrawn from it;
- (g) nothing has happened since you applied for the *loan* which has led or could lead to a deterioration in your financial circumstances; and
- (h) when a *guarantee* is being given:
- a solicitor has confirmed that each guarantor has received a copy of each part of *this agreement* and the *guarantee*; and

we have received either:

- a certificate of independent legal advice satisfactory to us for each guarantor from a solicitor who does not work for the firm of solicitors acting for the borrower; or
- a declaration satisfactory to us by each guarantor that prior to signing the *guarantee* has read and understood the *guarantee* and has elected not to receive independent legal advice.

### Time Limit for first advance

- 2.2 Even if our requirements in clause 2.1 are met, our obligation to lend you the *loan amount* ends if the *settlement date* does not occur within the time limit specified in *this agreement*.

## 3 Accounts

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### Splitting the loan into accounts

- 3.1 You may ask us to split the *loan* into *accounts* or to change the features of existing *accounts* or adjust the limit of each *account*. We may agree or decline your request at our discretion.

### How we assign debits and credits

- 3.2 Interest charges applicable to each *account* are debited to that *account*.
- 3.3 We decide to which *account* credit fees and other amounts (such as rates that you have failed to pay) are debited.

### Combining accounts of a loan

- 3.4 We may combine two or more *accounts* at any time if they have identical:
- repayment types;
  - *annual interest rates*;
  - *fixed rate periods* (if relevant); and
  - *interest only periods* (if relevant).

## Payments

### 4 What you must pay

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- 4.1 You must repay all amounts you borrow from us and you must pay us interest, credit fee and charges, and other amounts under clause 7.

### 5 Scheduled Repayments

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#### Frequency

- 5.1 You must make *scheduled repayments* at the frequency indicated in the *Loan Details* (unless you change the frequency under clause 6).

#### Principal and interest repayments

- 5.2 We calculate *principal and interest repayments* so that over the *loan term* you will repay:
- the *balance owing* on each *account*; and
  - all known interest charges and other fees and amounts which accrue or become payable.

#### Final payment

- 5.3 The final payment on the last day of the *loan term* will be the *total amount owing* on that day and may include amounts that were not included in the *scheduled repayments*.

#### Interest only repayments

- 5.4 Each *interest only repayment* equals the sum of:
- interest charges for the week, fortnight or month covered by that repayment; and

- other fees and amounts we notify you as being included in the repayment amount.

### Limit on interest only period

- 5.5 An *interest only period* cannot extend beyond 5 years from the *settlement date*.

### Changing repayment amounts

- 5.6 We may change the amount of the *scheduled payments* for an *account* in line with changes to the *annual interest rate* for that *account* or as a result of debiting fees, charges or other payments made by us.

We will notify you in writing of a change within 5 working days of the day on which the change takes effect.

## 6 When and how to pay

### When repayments are due

- 6.1 Your first *scheduled repayment* is due one month after the *settlement date* if your *payment frequency* is monthly; one month and 7 days after the *settlement date* if your *payment frequency* is weekly; and one month and fourteen days after the *settlement date* if your *payment frequency* is fortnightly.

If you ask, we may agree to vary the first payment date to coincide with a date which coincides you're your receipt of salary or wages or other regular income.

All subsequent *scheduled repayments* are due monthly, fortnightly or weekly according to the *payment frequency* in the *Loan Details*).

**Monthly** repayments are due on the same date in each following month as the first repayment.

**Fortnightly** repayments are due every 14 days following the first repayment.

**Weekly** repayments are due every 7 days following the first repayment.

If a payment is due on the 29th, 30th or 31st of a month, and a particular month does not have that date, you must make that payment on the last day of that month.

Please note that the amount of the first payment disclosed in the *Loan Details* may differ if the actual settlement date is different from the assumed settlement date specified in the *Loan Details*.

### Repayments due on a non-working day

- 6.2 Despite clause 6.1, if a repayment is due on a day which is not a *working day*, you may make the repayment on the next *working day*.

### Switching repayment frequencies and repayment date

- 6.3 **Variable rate accounts:** You may switch between monthly, fortnightly and weekly repayments for any *account* that is a *variable rate account*.

**Fixed rate accounts:** After the *settlement date*, you may not switch between monthly, fortnightly and weekly repayments in relation to any *fixed rate account* unless:

- the *fixed rate period* has expired; or
- the *fixed rate period* is broken – please note that *break costs* may be payable if a *fixed rate period* is broken.

- 6.4 You may only switch the repayment frequency for the *loan* or any *account* once each month.

- 6.5 You may not switch the repayment frequency for the *loan* or any *account* if you are in default.

### Final repayment

- 6.6 On or before the last day of the *loan term*, you must pay the *total amount owing*.

### How payments are to be made

- 6.7 One of the documents you sign and give to us at the start of the *loan* is a direct debit authority. This permits us to debit amounts directly from an *account* you have with a financial institution.

You must not cancel any direct debit authorisation you give us or close the *account* referred to in any direct debit authorisation unless you first give us another direct debit authorisation acceptable to us. You must also ensure there is enough money in the *account* to meet each debit.

- 6.8 It is, however, your obligation to make all payments to us on time. If a direct debit fails or is reversed for any reason then you must pay us by direct credit to the *account* we tell you to pay.

- 6.9 A payment is not made until it has been received by us and credited to your *loan*. It is important that you quote your loan number when making the deposit.

- 6.10 Each payment by you to us under this agreement is to be made:
- free of any restriction or condition; and



- free and clear of and (except to the extent required by law) without any deduction or withholding for or on account of tax or on any other account, whether by way of set-off, counterclaim or otherwise.

## **7 Other amounts**

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### **Other amounts to be paid**

7.1 You must pay us:

- (a) all fees and charges when they are due;
- (b) any government charges and duties on receipts or withdrawals under *this agreement*, if any;
- (c) any expenses we reasonably incur in enforcing *this agreement* or a *security* after you are in default including but not limited to:
  - (i) in the case of a mortgage, expenses incurred in insuring, preserving and maintaining the *property*; and
  - (ii) the use of our staff and facilities;
  - (iii) any government or local authority taxes that are payable upon sale of a *property* including GST (if any) on the sale price.
- (d) any costs or expenses we reasonably incur in doing anything that you are required to do under *this agreement* but have failed to do; and

These payments are due and payable on the dates specified in the *Loan Details* and if no such dates are specified they are due and payable when we incur them whether or not demand has been made for them.

These payments include any amount which we pay because we reasonably believe it is or may be payable, even if we subsequently discover that it was not necessary to pay the amount (for example, if you renew your insurance over mortgaged *property* but fail to tell us that you have done so, and we then take out insurance over the same *property*).

### **How to pay other amounts**

7.2 You authorise us to debit to an *account* all amounts we may pay under clause 7.1. If you have more than one *account*, we will debit a *variable rate account* if you have one. We may do so on or after the date we pay them or the date they become due or payable by you or us (whichever is earlier).

### **Interest on other amounts**

7.3 If we make a payment under clause 7.1 and you fail to pay us that amount when it is due, the interest rate used to calculate the *default rate* payable on that overdue amount is the highest *annual interest rate* that is payable on any *account* under *this agreement*. If there is no such rate then the interest rate is such *variable rate* as may select.

### **Changes to fees and charges**

7.4 We may change the amount of any fee or charge, when a fee is charged, or impose a new one. We will give you advance notice of these changes by:

- writing to you or including the notice on a statement that we send to you;
- publishing and advertisement in a regional newspaper advertisement circulating in your area; or
- giving notice on our website and emailing you details.

7.5 To the extent they are known, the amounts of the fees and charges current at the *disclosure date* are shown in the *fees brochure* and in the *Loan Details*.

## **Interest**

### **8 Interest charges**

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#### **How interest is calculated**

8.1 Interest on an *account* accrues daily and is calculated on the *balance owing* on that *account* as at the end of each day.

8.2 Interest is calculated by multiplying that balance by the daily *annual interest rate* applying for that *account*. The daily rate is the *annual interest rate* divided by 365, even in a leap year.

#### **When interest is debited**

8.3 Interest for an *account* is debited on each payment date as set out in clause 6.1.

#### **How your interest rate is determined**

8.4 The *annual interest rate* for an *account* is determined by adding to the *named interest rate* for that *account* the *margin* as disclosed in the *Financial Table*.

8.5 The *named interest rates* that we offer from time to time can be found at any time on our customer interest rate guide published on our website [www.avantifinance.co.nz](http://www.avantifinance.co.nz). Alternatively, you may contact us and ask for a copy.

## Interest rates

### 9 Variable rate

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#### Your variable interest rate

- 9.1 The *annual interest rate* for a variable *account* is a combination of the *named interest rate* plus the *margin* disclosed in the *Loan Details* or, if applicable, any *Loan Variation Statement*.
- 9.2 We can change the *named interest* for an *account* at any time by giving you written notice no later than 5 working days after the date any change takes effect.
- 9.3 A change to a *margin* for an *account* may not increase the *margin* beyond the *margin* for that *account* as shown in the financial table in the *Loan Details*.
- 9.4 We will notify you in writing of any changes to the annual interest rate for a variable rate *account* whether this is caused by a change to the *variable rate* or to the *margin*:

### 10 Fixed rates

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#### Effect of fixing

- 10.1 If the *annual interest rate* for an *account* is a *fixed rate* then we agree that for the *fixed rate period* selected the *named interest rate* for that *account* will not change even if other interest rates rise or fall or if the published *named interest rate* for that fixed rate period changes.

#### Selecting the fixed rate option

- 10.2 Under *this agreement*, you may choose a *fixed rate account* either at the start of the *loan term* or subject to clause 12, during the *loan term*.

#### Fixed rate at the start of the loan term

- 10.3 The *fixed rate* specified in the *Loan Details* for the relevant *fixed rate period* applies as at the *disclosure date* and is locked for a period of 14 days. If the *settlement date* occurs after 14 days from the *disclosure date* the *fixed rate* may have changed by the *settlement date*. We will notify you in writing of the actual *fixed rate* and repayment amount or amounts within 5 working days of the change taking effect.

#### What happens at the end of the fixed rate period?

- 10.4 When an *account* is a *fixed rate account*, it automatically changes to a *variable rate account* at the end of the current *fixed rate period*.
- 10.5 You may, however, choose to continue as a *fixed rate account* by contacting us in writing at least 14 days before the end of the current *fixed rate*

*period*. You may only continue as a *fixed rate account* if:

- we are offering a *fixed rate* at the time you make the request; and
- we agree to allow the *account* to continue with a *fixed rate*.

- 10.6 Any continuation as a *fixed rate account* will be recorded in a *Loan Variation Statement* as a change to the terms of *this agreement*.

### 11 Line of credit interest rate

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#### Annual interest rate

- 11.1 The *annual interest rate* for a *line of credit account* will only ever be a *variable rate*.

### 12 Changing interest rate options

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#### Choosing to change - variable to fixed

- 12.1 You may change an *account* from a *variable rate* to a *fixed rate* by contacting us in writing.

Any change is at our absolute discretion which means we don't have to agree to your request nor do we need to give reasons.

#### Recording a change of account

- 12.2 Once you contact us, we will get back to you and advise you if the fixed rate term you have chosen is available. We will also tell you the probable *fixed rate* and repayment amount.

If you agree to proceed with the change we will proceed with the change on the day you ask and will send you a *Loan Variation Statement* to confirm the changes.

#### Choosing to change fixed to variable

- 12.3 You may change an *account* from a *fixed rate* to a *variable rate* but if you change during a *fixed rate period*, you may have to pay *break costs*.

## Prepayment and Break Costs

### 13 Prepaying early under a variable rate or line of credit account

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If you pay us all or part of the loan amount other than by way of a *scheduled repayment*, this is referred to as a "prepayment".

#### How much and when you may prepay

- 13.1 You may prepay:

- (a) part of a *variable rate* or *line of credit account* at any time by:
  - (i) paying one or more lump sums; or
  - (ii) increasing the amount of your *scheduled repayments*;
- (b) all of a *variable rate* or *line of credit account* without notice.

way between two periods, round down to the lower period.

- c = the principal amount of the loan which is to be repaid early.
- d = the number of regular payments remaining from the early repayment date to the expiry of the fixed interest rate term of the loan (excluding any payment due to be made on the early repayment date).
- e = the number of regular payments per annum (e.g. weekly instalments = 52).
- f = a discounting factor used to give the Present Value. The interest rate used in the discount factor will be "b" above.
- g = the administrative charge from time to time for handling the early repayment.

## 14 Prepaying under the fixed rate account

### How much and when you may prepay

- 14.1 You may prepay a *fixed rate account* at the **end** of the *fixed rate period* without giving notice.
- 14.2 If you prepay a *fixed rate account* **during** the *fixed rate period* you may be required to pay *break costs* in respect of the amount prepaid.
- 14.3 Break costs may also be payable if you ask to switch the interest rate type from *fixed* to *variable* **during** the *fixed rate period*.
- 14.4 Break costs may also be payable if a prepayment occurs following a default and we exercise our rights to require repayment.

## 15 Break costs

### Calculation of break costs

- 15.1 *Break costs* are a reasonable estimate of our loss resulting from a change in the payment terms of a *fixed rate account*. This loss may occur because we have to break our funding arrangements. It is usually a result of changes in market interest rates between the start of the *fixed rate period* and when you break. We calculate *break costs* using the *break costs method* set out in clause 15.2.

### Explanation of break costs method

- 15.2 The *break costs method* involves applying the following formula to information available to us at the time of the prepayment:

$$\text{Break Cost} = \{[(a-b)\% \times c \times d/e] \times f\} + g$$

where:

- a = fixed interest rate applying to the loan at the date of early repayment.
- b = the relevant fixed interest rate which would apply to the loan if the loan were to be advanced on the early repayment date for a term equal to or closest to the remaining fixed interest rate term of the loan. If the remaining term is exactly half

### Notes

1. If "a" is equal to or less than "b" the early repayment recovery will be "g" only.
2. As an example: if the remaining fixed interest rate term of the loan is 16 months, the applicable interest rate (on date of repayment) will be the 1 year fixed rate; if the remaining fixed rate term is 20 months, the applicable rate will be the 2 year fixed interest rate.
3. The "Present Value" is defined as the value of receiving a lump sum today instead of receiving an income stream in the future. Income received now has a greater value than later because the funds can be re-invested to generate more income.
4. If the principal amount to be repaid early is not more than 5% of the principal amount of the loan on the early repayment date and only one early repayment is made in any one year in any fixed interest rate period of the loan, the early repayment recovery will be "g" only.

The calculation of *break costs* is done for each *fixed rate account* which you are taken to have broken. *Break costs* are equal to the total of each amount so calculated.

We do not calculate *break costs* using the formula prescribed by the Credit Contracts and Consumer Finance Regulations 2004

## 16 Prepaying under all options

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### Your decision is final

- 16.1 Once you have notified us of your decision to repay, you cannot change your mind - you must repay.

### Early prepayment of accounts

- 16.2 You may direct us to credit any prepayment to a particular *account or accounts*.

### Effect of part prepayment

- 16.3 If you prepay part of an *account*, your *scheduled repayment* amount does not change (unless we specifically agree to your request for a change). This helps you repay the *loan* or the *account* faster.

## Redraw

### 17 Redrawing amounts

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#### When redraw may be available

- 17.1 If you have prepaid amounts under *this agreement* you may ask to *redraw* (or re-borrow) any amount prepaid. If you have prepaid under a *fixed rate account*, any *redraw* will be at a *variable rate* and will need to be included in a *variable rate account*.
- 17.2 The *loan amount* reduces over time as you make the *scheduled repayments*. We can calculate at any time what your *loan amount* should be assuming all *scheduled repayments* have been made on time. We call this amount the *scheduled balance*.
- 17.3 You may only *redraw* an amount prepaid if the actual *loan amount* after the *redraw* does not exceed the *scheduled balance*.

#### Conditions to redraw

- 17.4 We may agree to allow you to *redraw* if:
- (a) you pay us the then current *redraw fee*; and
  - (b) you are not in default when we receive your request and you have not been in default during the previous period of 12 months; and
  - (c) the *redraw* amount does not result in the actual *loan amount* after the *redraw* exceeding the *scheduled balance*; and
  - (d) we have found satisfactory any further information regarding your financial

position or regarding any *property* that we may have asked you to give us.

### Declarations you make

- 17.5 Each time you request a *redraw*, you declare to us that:
- (a) your financial position has not been adversely affected by any changes since you last provided us with financial information about you;
  - (b) you have not broken any of the promises you have made to us in *this agreement* or in any *security*; and
  - (c) you will be able to meet your commitments under *this agreement* after the *redraw* without substantial hardship; and
  - (d) you have made the request for a *redraw* after reaching an informed decision to borrow.

## Trustees and GST

### 18 Lending to Trustees

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#### Trustees' acknowledgement

- 18.3 If you enter into *this agreement* as trustee of any trust, you acknowledge:
- (a) that *this agreement* is for the benefit of the trust;
  - (b) you have authority to enter into *this agreement*; and
  - (c) you have the right to be fully indemnified out of trust assets for obligations incurred under *this agreement*.

#### Loans to trustees

- 18.4 If you have entered into *this agreement* as a trustee of any trust, you are liable under this contract in your own right and as trustee of the trust. This means that we can recover against your personal assets as well as the trust assets. (but see 18.6 below)

#### Change of trustees requires consent

- 18.5 You must not change a trustee, terminate the trust, or change any terms of the trust without our consent.

## Limited liability trustees

18.6 If any one of you is named in *this agreement* as a limited liability trustee then, despite what we say in clause 18.4 we agree that the liability of the limited liability trustee under *this agreement* and under any *security* is not personal and unlimited but will be limited to an amount (the "limited amount") equal to the value of the assets of the trust at the time of enforcement.

18.7 If :

- (a) the right of the limited liability trustee to be indemnified from the assets of the trust has been lost – (for example, your trust deed may provide that you lose this right if you commit an act that amounts to wilful default or gross negligence); and
- (b) as a result, we are unable to recover the limited amount from the limited liability trustee

then the limitation of liability under clause 18.6 does not apply and the limited liability trustee is liable personally for the amount which, but for the trustee's loss of indemnity, we would have been able to recover from the assets of the trust.

## 19 Your GST position

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### Assumption that property not liable for GST on sale

19.1 Unless you have provided us with information to the contrary, we are lending to you on the basis that neither you nor any *security provider* are a "registered person" for the purposes of the Goods and Services Tax Act 1985.

19.2 If you or any *security provider* is a registered person for the purposes of the Goods and Services Tax Act 1985, then unless you have provided us with information to the contrary, you warrant that neither you nor any *security provider* is using any *property* for a "taxable activity" under that Act.

### Actions if assumption incorrect or GST status changes

19.3 If the warranty in clause 19.2 is incorrect or if your or a *security provider's* GST status in respect of any *property* changes then:

- (a) you must advise us of the change immediately it occurs;
- (b) we may revalue the *property* to determine its value net of GST;
- (c) if, following a revaluation, the *total amount owing* exceeds the amount we would otherwise have lent against the value of the *property*, you must repay immediately

an amount sufficient to reduce the *total amount owing* to such amount as we require.

19.4 If you apply to the Inland Revenue Department (IRD) or a *security provider* applies to the IRD for an input tax credit in respect of any *property* then immediately that application is made and without the need for any demand:

- (a) the *total amount owing* is reduced by an amount equal to the input tax credit claimed; and
- (b) the amount of the reduction becomes due and payable and must be repaid to us.

## Default

### 20 When you are in default

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20.1 You are in default if:

- (a) you do (or do not do) something that you have promised us in *this agreement* that you would not do (or that you would do); or
- (b) for example, you do not pay on time any amount due under *this agreement*, any other agreement you have with us or *guarantee* you have with us; or
- (c) our direct debit instruction for your *account* is subsequently reversed by the bank or financial institution to whom it is given; or
- (d) you give (or we discover you have given) or another person acting with your knowledge or permission gives (or we discover has given) us false or misleading information in connection with *this agreement* or a *security*; or
- (e) we reasonably believe you or another person acting with your knowledge or permission has acted fraudulently in connection with *this agreement* or a *security*; or
- (f) an *adverse credit event* occurs that affects either you or any *security provider*, or
- (g) you are, or a *security provider* is, in material default under a *security* or withdraws from it or materially breaches its terms, or a *security* is or may be unenforceable.

## 21 What can happen if you default

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### Notice and grace period

- 21.1 If you are in default, we may give you a notice under section 119 of the Property Law Act 2007 stating that you are in default and giving you a specified period in which to remedy the default (if it can be remedied).

### Total amount owing becomes payable

- 21.2 If the default is not remedied within the period given in the notice then, at the end of that period, the *total amount owing* becomes immediately due for payment (to the extent it is not already due for payment). The *loan* and each *account* is also immediately cancelled.

### Enforcement of Security and judgment

- 21.3 We may then sue you to recover the *total amount owing*, or we may enforce any *security*, or we may do both.

## 22 Default interest and default charges

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### Default interest

- 22.1 If you do not make a payment on time, the *default rate* may be charged daily on the amount in default from the day the payment was due until the day it is paid.

### Capitalising default interest

- 22.2 If you do not pay default interest charges, we add them to the overdue amount (this is known as "capitalising") on each date that interest is debited to your *accounts* and monthly after the end of the *loan term*. *Default interest* then accrues on the new amount overdue.

## General matters

## 23 Credit law

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- 23.1 This clause applies to the extent that any *credit law* to *this agreement*.
- If:
- (a) a *credit law* would otherwise make a provision of *this agreement* illegal, void or unenforceable; or
  - (b) a provision of *this agreement* would otherwise contravene a requirement of that *credit law* or impose an obligation or liability which is prohibited by that *credit law*,

*this agreement* is to be read as if that provision were varied to the extent necessary to comply with that *credit law* or, if necessary, omitted.

## 24 Statements for your accounts

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- 24.1 We give you a statement for your *loan account* every 6 months until there is no *balance owing* on your *loan account*.
- 24.2 For a *line of credit account*, we will give you a statement at monthly intervals until it becomes a *principal and interest account*.
- 24.3 If you have consented to receiving statements electronically then we may send those statements to you in an electronic form and/or in an electronic communication.

## 25 Instructions from one borrower

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- 25.1 Where there are two or more of you we are authorised to act on the instructions of any one of you without the need to obtain confirmation or instructions from the others. Each of you is bound by instructions given to us by the others.

## 26 Financial information and valuations

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### Obligation to provide valuation/ other financial information

- 26.1 We may require you to provide information at any time about your financial position and we may require a valuation to be completed by a registered valuer of any *property* at any time.
- 26.2 The costs of any valuation is payable by you.
- 26.3 Any *property* valuation is for our use only.

## 27 Insurance cover and proceeds

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- 27.1 You must maintain insurance that provides cover for an amount sufficient to fully replace of the buildings and any other built structures on the *property*.
- 27.2 We may (but do not need to) agree in writing to another insurance value.
- 27.3 Insurance must be obtained against every risk normally covered in a comprehensive policy including but not limited to loss or damage by fire, theft, vandalism, flood, natural disaster and any other risks we require.
- 27.4 We can require you to use the proceeds of any insurance claim to repay all principal, interest, fees and other amounts owing to us under *this agreement* and we can ask the insurance company to pay out any claim directly to us.

## **28 How we may exercise our rights**

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- 28.1 We may exercise a right or remedy or give or refuse our consent in any way we consider appropriate including by imposing conditions.
- 28.2 If we do not exercise a right or remedy fully or at a given time, we can still exercise it later.
- 28.3 Our rights and remedies under *this agreement* are in addition to other rights and remedies provided by law independently of it.
- 28.4 Our rights and remedies may be exercised on our behalf by any of our employees whose job title includes the word “manager” or by any other person we authorise.
- 28.5 We are not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right or remedy.

## **29 Blanks**

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- 29.1 You agree that we may fill in any blanks in any document related to *this agreement* (such as an acknowledgment).

## **30 Our certificates**

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- 30.1 We may give you a certificate or formal statement about a matter or about an amount (including *break costs*) payable in connection with *this agreement*. This is sufficient evidence of the matter or amount, unless it is proved to be incorrect.

## **31 Assignment and disclosure**

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- 31.1 We may assign, transfer or otherwise deal with our rights and obligations under *this agreement* in any way we consider appropriate. You agree that we may disclose any information or documents we consider desirable to help us exercise this right.
- 31.2 You also agree that we may disclose information or documents at any time on a confidential basis to any potential assignee, transferee or other person with whom we anticipate entering into contractual relations in connection with *this agreement* or any third party who has or may have in the future a financial interest in this loan. This includes any information about you whether or not that information was obtained in confidence and whether or not that information is publicly available.
- 31.3 You agree that we may disclose information to a third party about this agreement or any associated loan application or financial dealings we may have with you as long as we are acting in accordance with our privacy policy when we disclose this information.

- 31.4 Your rights are personal to you and may not be assigned without our written consent.

## **32 Notices, other communications and service of documents**

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- 32.1 Notices, certificates, consents, approvals and other communications in connection with *this agreement* must be in writing or in any other form permitted by it.
- 32.2 Disclosure of any disclosure statement required to be given to you by the *credit law*, however, will be given to you in accordance with the *credit law*.
- 32.3 Communications from us may be signed by any employee whose job title includes the word “manager” or any other person we authorise. If you are a company, communications from you must be signed by a director.
- 32.4 Communications to you may be:
- (a) given personally (if you are a company, to one of your directors) at; or
  - (b) left at; or
  - (c) sent by post to; or
  - (d) if you have consented to receiving electronic communications, sent by electronic communication to, the address or, in the case of electronic communications, the information system you tell us for that purpose or your address last known to us; or
  - (e) given in any other way permitted by law.
- 32.5 Communications for us must be:
- (a) given personally to one of our employees at:
    - its address stated in *this agreement*; or
    - any other address we tell you; or
    - our registered office; or
  - (b) sent by prepaid post or electronically (such as by fax or email) to any of those places; or
  - (c) given in any other way permitted by law.

32.6 A communication is taken to be given:

- (a) in the case of a disclosure statement under the *credit law* in accordance with section 35 of the *credit law*.
- (b) in the case of a communication given personally – on the date it bears or the date it is received by the person to whom it is addressed, whichever is the later; or
- (c) in the case of a communication sent by post – on the date it bears or the date when it would have been delivered in the ordinary course of post, whichever is the later; or
- (d) in the case of a communication sent by fax or some other form of electronic transmission – on the date it bears or the date on which the machine from which it was sent produces a report indicating that the communication was sent to the fax (or other) number of the person to whom it is addressed, whichever is the later; or
- (e) in the case of a communication given by newspaper advertisement – the date it is first published

32.7 We may serve any document in a court action (including a writ of summons, other originating process or third or other party notice) on you by delivering it to your residential address in *this agreement* (or any changed residential address notified to us) or by leaving it there. This does not prevent any other method of service.

### **33 Variations**

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33.1 We may vary any term of *this agreement* for one or more of the following reasons (without seeking your consent):

- (a) to comply with any change or anticipated change in any relevant law, code of practice, guidance or general banking practice;
- (b) to reflect any decision of a court, ombudsman or regulator;
- (c) to reflect a change in our systems or procedures, including for security reasons;
- (d) as a result of changed circumstances (including by adding benefits or new features);
- (e) to respond proportionately to changes in the cost of providing the *loan* (including by changing *annual interest rates*); or
- (f) to make them clearer.

We must notify you of any variation no later than 5 working days after it takes effect.

### **34 Your promises to us**

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#### **All information is correct**

34.1 You promise us that all representations you make or have made and all information and documents you, or another person acting with your knowledge or permission, has or will give to us in connection with *this agreement* are or will be true and correct.

You acknowledge that we have relied upon the accuracy of those representations, information and documents in entering into *this agreement* and will continue to do so in dealing with you.

#### **Future actions**

34.2 You undertake and agree:

- (a) that you will not materially default under, withdraw from, or materially breach the terms of any *security* or take any action that may result in any *security* being unenforceable;
- (b) to ensure that any *security provider* does not materially default under, withdraw from, or materially breach the terms of any *security* or take any action that may result in any *security* being unenforceable;
- (c) that you must not become *insolvent* and that steps will not be taken to make you *insolvent*;
- (d) to ensure that any *security provider* does not become insolvent and that steps will not be taken to make any *security provider insolvent*;
- (e) that, if you have entered into *this agreement* as a trustee of a trust, you will not breach the terms of that trust and will ensure that no other trustee breaches the terms of that trust; and
- (f) to take all steps to prevent any event occurring which may materially adversely affect our rights under *this agreement* or a *security*.

#### **Appointment as your attorney**

34.3 By signing *this agreement*, you are giving us an irrevocable power of attorney to act on your behalf to:

- (a) communicate with the IRD relating to your GST status and any GST that may have



been claimed by you or may be or become payable in respect of any property.

- (b) communicate with the local authority in respect of any rating *account* and information relating to the *property*;
- (c) make, discuss, deal with and to settle with the insurer or any other party all claims that may arise under the house insurance policy or in connection with any damage or destruction to the *property*.
- (d) do anything that you have agreed to do, including executing documents on your behalf, that we consider desirable to protect our interests under *this agreement*.

### 35 Appointment of agent for service in New Zealand

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- 35.1 If you do not live in New Zealand, you must appoint a person in New Zealand as your agent in New Zealand for service of notices under section 355 of the Property Law Act 2007 and any other notices served on you. This appointment must include granting that person an irrevocable power of attorney.
- 35.2 By signing *this agreement* each of you appoints each other borrower or guarantor be your agent for service for the purposes of section 355 of the Property Law Act 2007 and for the service of notices under *this agreement* during any period when you are out of New Zealand.

### 36 Applicable law

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- 36.1 *This agreement* is governed by the law in force in New Zealand. You and we submit to the non-exclusive jurisdiction of the courts of that place.

### 37 Meaning of words

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- 37.1 These meanings apply in *this agreement*.

**account** means, each *account* that we establish for recording all transactions relating to each portion of the *loan*. If the *loan* is not split into portions then there is only one *account*.

**account term** means the total period over which the *loan amount* for that *account* must be repaid in full. You may have a different *account term* for each *account*.

**adverse credit event** means:

- a person becoming *insolvent*; or

- you default under any other credit agreement with us or with any other person; or
- an event occurs which materially and adversely affects our rights under *this agreement* or any *security* to recover the *balance owing*; or
- without limiting the previous statement an adverse credit event occurs if the value of any *property* given as security falls to such an extent that the *balance owing* under *this agreement* exceeds the value of the *property* and any other *security* we hold from you to secure the *balance owing*; or
- any of you die and as a result we believe on reasonable grounds that the ability of all parties bound by *this agreement* to meet all *scheduled repayments* becomes materially impaired.

**annual interest rate** means a per annum rate of interest.

**balance owing** means at any time; for each *account*, the difference between all amounts credited and all amounts debited to that *account* up to that time. When this amount is to be calculated for the end of a day, it includes all debits and credits assigned to that day.

**break costs** and **break costs method** see clause 15.

**credit law** means the Credit Contracts and Consumer Finance Act 2003 as amended or replaced, the Fair Trading Act 1986 and all regulations made under these Acts and any other law that governs or regulates the provision of credit or the terms of contracts relating to the provision of credit.

**credit limit** means the amount that the *balance owing* under a *line of credit account* may not exceed at any time.

**default rate** means the interest rate that is 5% per annum more than the *annual interest rate* applying to the amount in default at any particular time.

**disclosure date**, is the date stated in the *Loan Details*, part D of *this agreement*.

**Fees Brochure** means the brochure that we publish from time to time setting out all of the fees and charges that are payable to us in connection with a *loan*.

**financial table(s)** means the table or tables in part D that detail information relating to each *account*.

**fixed rate account** means an *account* under which the *annual interest rate* that applies does not change during that *account's fixed rate period*.

**fixed rate**, means the *annual interest rate* that applies to an *account* and does not change during a *fixed rate period*.

**fixed rate period** see clause 10.

**General Terms** means this document as updated, varied and replaced from time to time.

**GST** has the same meaning it has in the *Goods and Services Tax Act 1985*.

**Guarantee** means a guarantee and indemnity in the form prepared by us under which each person named a Guarantor in *this agreement*:

- guarantees the repayment of all moneys owing by the Borrower(s) to us under this agreement or any other agreement; and
- indemnifies us against any loss suffered as a result of default by the Borrower(s).

**insolvent** means:

- in respect of a company, any step taken for the liquidation, voluntary administration, receivership, reconstruction, winding up, dissolution, deregistration, or any arrangement or compromise proposed by the company to its creditors or the company being declared at risk pursuant to the Corporations (Investigations and Management) Act 1989, or a statutory manager being appointed or any step taken with a view to any such appointment in respect of the company under that Act or being otherwise unable to pay its debts as they fall due, and
- in respect of an individual, that person committing an act of bankruptcy as set out in ss17-28 of the Insolvency Act 2006, being adjudicated bankrupt, or the debtor filing an application for bankruptcy with the Official Assignee (as defined in the Insolvency Act 2006).

**interest only period**, means the period stated in the *Loan Details* or a *Loan Variation*

*Statement* during which only interest is payable on an *account*.

**interest only repayment** see clauses 5.4 and 5.5.

**line of credit account** means an *account* specified as such in the *Loan Details* – see clause 1.2.

**line of credit period** means the period specified as such in the *Loan Details* which may not exceed five years.

**loan** means all of the money that we agree to lend you under *this agreement*.

**loan amount**, means the amount we agree to lend you as set out in the *Loan Details*. If a *loan* is split into *accounts*, there is a *loan amount* for each *account* and, depending on the context, *loan amount* refers to the *loan amount* for an *account* or the *loan amount* for all *accounts*.

**Loan Details** means, for a *loan*, the *Loan Details* we provide to you when we offer you the *loan* and which form part of *this agreement* and where the context requires, includes any *Variation Loan Statement*.

**loan term**, means the number of years over which the *loan* is repayable and is stated in the *Loan Details*.

**Loan Variation Statement** means in relation to each further advance and each agreement to vary the terms of *this agreement*, the document that we send you that records the terms of that further advance or variation. Each *Loan Variation Statement* becomes part of *this agreement*.

**margin** means the percentage amount that we add to the *named interest rate* to determine the *annual interest rate* payable on an *account*.

**named interest rate** means the name given to the base rate for an *account* as disclosed in the financial tables.

**payment frequency** means the frequency at which you choose to make the *schedule repayments* being any of weekly, fortnightly or monthly.

**principal and interest repayment** see clause 5.3.

**property** means the *property* the subject of any mortgage of real *property* described in the *Loan Details* under "Security"; a *property* comprises all the mortgagor's estate and

interest in the *property* and rights which may arise in connection with it including any land proceeds.

**redraw** means accessing any prepaid amounts available under an *account* of a *loan* and includes a drawdown by you under a *line of credit account*.

**repayment date** means each date for each *scheduled repayment*.

**scheduled balance** means on any day the amount calculated to be the *balance owing* on that day on the basis that all *loan amounts* advanced to you had been reduced by *scheduled repayments* only and no repayments had been made.

**scheduled repayments** mean the amounts specified in the *Loan Details* (or a *Loan Variation Statement*) as the amount of the regular repayments that, if made on time, will reduce the *loan amount* to zero over the *loan term*.

**security** means each security described in the *Loan Details* under "Security" and any substitute or additional security given in connection with *this agreement*. A security enables *us* to recover any money or seek the performance of obligations from the proceeds of the sale of any real or personal property. It includes a mortgage, charge, lien, pledge, trust or power, guarantee and indemnity and any security agreement that gives us a *security interest*.

**security interest** means an interest in real or personal or other property that secures payment or performance of an obligation without regard to the form of the transaction and the identity of the person who has title to the property and includes the meaning defined in section 17 of the Personal Property Securities Act 1999.

**security provider** means each person (other than you) who gives a *security*.

**settlement date** means the date on which we are ready and able to lend you the *loan amount*, being a date requested by you and even if the actual date you receive the *loan* may be a later date because, for example, you or your lawyer are unable to satisfy a pre settlement condition on time.

**this agreement** means all the documents that make up the credit contract and include the document titled Loan Agreement, each set of *Loan Details*, the *General Terms*, each *security*, each *Guarantee*, and any *Loan Variation Statement*.

**total amount owing** means, at any time, the *balance owing* under *this agreement* at that time, plus all accrued interest charges, default interest charges, costs, expenses, GST and all other amounts which you must pay under *this agreement*, but which have not been debited to your *account* or *accounts* at that time.

**variable rate account** means an *account* for which the *annual interest rate* is a *variable rate*

**variable rate** means, for an *account*, the *named interest rate* plus the *margin* as set out in the *financial tables* as varied from time to time.

**we** and **us** means Avanti Finance Limited and includes its successors and assigns.

**working day** means a day other than a Saturday or Sunday or public holiday in Auckland except for the purposes of making disclosure and giving you a notice under *this agreement*; in which case it has the meaning set out in section 5 of the Credit Contracts and Consumer Finance Act 2003.

**you** means the person or persons named in the *Loan Details* as "Borrower" and where the context permits or requires includes the person or persons named as "Guarantor". If there are more than one, **you** means each of them separately and every two or more of them jointly. **You** includes your successors and assigns.

A reference to:

- a thing includes the whole and each part of it.
- a document includes any variation or replacement of it.
- law means common law, principles of equity, and laws made by parliament (and laws made by parliament include regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of them).
- the words **including** or **such as** when introducing an example do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.
- the word **person** includes an individual, a firm, a body corporate, an unincorporated association or an authority.

The singular includes the plural and vice versa.

Headings are for convenience only and do not affect the interpretation of *this agreement*.

